

September 1, 2005

Honorable Kent Conrad
Ranking Member
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Senator:

CBO's cost estimate for S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, is enclosed with this letter. Over the 2006-2015 period, CBO estimates direct spending would increase by nearly \$70 billion to pay asbestos claimants and administrative costs. We estimate revenues would increase by about \$63 billion over the same period; and on balance, we estimate that enactment of the bill would increase projected budget deficits by about \$6.5 billion over the next 10 years. Your letter of July 19, 2005, asked CBO to address some specific concerns about the legislation—particularly with regard to the uncertainty associated with assumptions about claims for payment under the bill. Responses to those concerns follow.

What is the risk that amounts in the U.S. Treasury outside of the Asbestos Trust Fund would be used to pay asbestos claimants?

S. 852 would authorize the Asbestos Fund Administrator to collect and borrow funds to pay valid claims and expenses. The bill would limit the amount of borrowing and would require the fund to use its resources to repay borrowed funds and interest costs. Under the provisions of section 405, the fund would have to stop accepting new claims if its current and future resources become inadequate to fulfill all existing and anticipated obligations, including its debt obligations. As stated in our August 25 cost estimate, as long as the fund's Administrator does not borrow from the U.S. Treasury beyond the means of the fund to repay such borrowing, the government's general funds would not be used to pay claims. Furthermore, section 406 states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the Asbestos Fund are inadequate.

Is there a mismatch between the contributions to be paid into the fund and the payments to be made from the fund?

CBO expects that about half of the fund's obligations would be incurred during the 2006-2015 time period, but that contributions to the fund would be nearly evenly spread over the first 30 years of the fund's operations. As a result, we expect that the fund would have to borrow to pay claims in those early years of its existence. As noted in our August 25 cost estimate, it is uncertain whether fund revenues would be adequate to pay all claims.

Can CBO quantify the degree of uncertainty about its assumptions regarding the numbers and types of asbestos claims?

A cost estimate for a new and unique government program over 50 years is very uncertain. Based on our review of claims projections made for similar legislation considered in the 108th Congress (S. 1125) and future claims projections made for private bankruptcy trust funds, we expect the value of future claims likely to be presented to the proposed federal Asbestos Trust Fund would be between \$120 billion and \$150 billion, although it is possible that the value of claims could fall outside of that range. Those figures do not include potential financing (interest) costs.

Among the claims projections we have reviewed, CBO generally finds broad agreement on the magnitude and types of claims for malignant conditions likely to be received by the fund. We estimate that such claims would account for roughly two-thirds of the value of all claims likely to be made. There is much less agreement, however, on the numbers and types of claims for nonmalignant conditions likely to be received by the fund. One area in which the potential costs are particularly uncertain is the number of applicants who will present evidence sufficient to obtain a compensation award for nonmalignant injuries. CBO estimates that about 15 percent of individuals with nonmalignant medical conditions due to asbestos exposure would qualify for awards under the medical criteria and administrative procedures specified in the legislation. The remaining 85 percent of such individuals would receive payments from the fund to monitor their future medical condition. If that projection were too high or too low by only 5 percentage points, the lifetime cost to the Asbestos Fund could change by \$10 billion.

Why is the estimate of the fund's revenues also uncertain?

S. 852 is designed to collect about \$140 billion from defendant firms and insurers. Actual collections could be less than that amount, but could not be significantly more. In addition the timing of some payments to the fund is uncertain because there are no firm deadlines in the bill concerning the Asbestos Insurers Commission, which would be charged with determining the distribution of assessments among insurance firms. Finally, the number, identity, and characteristics of the firms that would be required to make payments into the Asbestos Trust Fund are largely unknown. Over a 30-year period, some firms in this group could be expected to liquidate and go out of business. The legislation anticipates that some firms may face bankruptcy and provides for surcharges to guarantee payment amounts, but the success of such mechanisms depends on the ability of the fund administrator to forecast attrition among this group of liable firms.

I hope this information is useful to you. If you have further questions about this cost estimate, the staff contacts are Mike Waters and Kim Cawley.

Sincerely,

Douglas Holtz-Eakin
Director

Enclosure

cc: Honorable Judd Gregg
Chairman

Honorable Arlen Specter
Chairman, Committee on the Judiciary

Honorable Patrick J. Leahy
Ranking Democratic Member